

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

RETHINK35, et al.,

*Plaintiffs,*

v.

TEXAS DEPARTMENT OF  
TRANSPORTATION,

*Defendant.*

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CIVIL ACTION NO. 1:24-CV-00092-DII

**NOTICE OF LODGING THE SECOND SUPPLEMENT  
TO THE ADMINISTRATIVE RECORD**

Defendant hereby lodges with the Court the Second Supplement to the Administrative Record for the Texas Department of Transportation's (TxDOT) decision regarding the I-35 Capital Express Central Project from US 290 East to State Highway 71/Ben White Boulevard ("CapEx Central" or "Project"). The Second Supplement to the Administrative Record for the Project consists of 4,169<sup>1</sup> pages (Bates numbered TxDOT-AR-052862 through TxDOT-AR-057031) contained on one flash drive. The Declaration of Doug Booher ("Declaration") certifying the Second Supplement to the Administrative Record is attached to this notice. An index of the Second Supplement to the Administrative Record is attached to the Declaration as Exhibit 1.

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<sup>1</sup> The Second Supplement's 4,169 pages is in addition to TxDOT's originally filed 52,462-page Administrative Record filed on June 11, 2024, Dkt. 28, and TxDOT's 399-page supplement to the record filed on September 4, 2024, Dkt. 38. With the Second Supplement, TxDOT's administrative record comprises 57,030 pages.

TxDOT filed its Administrative Record on June 11, 2024. Dkt. 28. Plaintiffs requested additional documents on June 28, 2024, and on September 3, 2024<sup>2</sup>. On September 4, 2024, in response to the June 28, 2024 request, TxDOT voluntarily filed its Supplemental Administrative Record, which included the March 2023 TxDOT Environmental Guide: Volume 2 Activity Instructions, along with a list identifying and specifying the locations of nearly 10,000 pages of comment letters and emails and related attachments already included in TxDOT's administrative record. Dkt. 38. Finally, on October 10, 2024, Plaintiffs filed their Motion to Complete and Supplement the Administrative Record, and, in the Alternative, Request for Judicial Notice. Dkt. 43. The 4,169-page Second Supplement to the Administrative record responds to Plaintiffs' motion seeking completion of the Administrative Record, which includes documents sought in plaintiffs' September 3, 2024 request.

On November 22, 2024, the Supplemental Administrative Record for the Project contained on a flash drive was served on counsel for Plaintiffs, Save Our Springs Alliance, ATTN: Robert J. Levinski, 4701 Westgate Blvd., Ste. D-401, Austin, Texas 78745, phone: (512) 477-2320, ext. 105, and on Rachel S. Doughty, Esq., Greenfire Law, PC, 2748 Adeline Street, Suite A, Berkeley, CA 94703, phone: (510) 900-9502, ext. 706. Two courtesy copies of the Administrative Record on flash drives have also been delivered to the United States District Court for the Western District of Texas, U.S. District Clerk's Office, ATTN: Alicia Davis, Divisional Office Manager,

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<sup>2</sup> TxDOT sent via Federal Express overnight delivery the flash drives containing the voluntary supplement on September 3, 2024 for delivery on September 4, 2024. Those drives had already been prepared when Plaintiffs' second request for supplementation was received via e-mail, thus, the second request for supplementation was not part of the voluntary supplement filed on September 4, 2024.

501 West Fifth Street, Suite 1100, Austin, Texas 78701, phone: (512) 916-5896, one for use by the Clerk and one for delivery to the assigned Judge's chambers.

Dated this 22nd day of November 2024.

Respectfully submitted,

KEN PAXTON  
Attorney General of Texas

BRENT WEBSTER  
First Assistant Attorney General

RALPH MOLINA  
Deputy First Assistant Attorney General

JAMES LLOYD  
Deputy Attorney General for Civil Litigation

NANETTE M. DINUNZIO  
Chief, Transportation Division

/s/ Lisa McClain Mitchell  
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*Attorneys for Defendant,  
Texas Department of Transportation*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 22, 2024, I electronically filed the foregoing Notice of Lodging the Administrative Record with the Clerk of the Court using the CM/ECF system, which will send notification to registered users.

Two flash drives containing the Administrative Record of the Texas Department of Transportation were delivered November 22, 2024 via overnight delivery to:

United States District Court for the                   ***Via Fed Ex: 7701 0299 8152***  
Western District of Texas  
U.S. District Clerk's Office  
ATTN: Alicia Davis, Divisional  
Office Manager  
501 West Fifth Street, Suite 1100  
Austin, Texas 78701  
Phone: (512) 916-5896

In addition, a flash drive containing the Administrative Record of the Texas Department of Transportation was delivered November 22, 2024 via overnight delivery to:

Save Our Springs Alliance                                   ***Via Fed Ex: 7701 0284 4973***  
ATTN: Robert J. Levinski  
4701 West Gate Blvd., D-401  
Austin, TX 78745  
Phone: 512-477-2320, ext. 105

Rachel S. Doughty, Esq.                                   ***Via Fed Ex: 7701 0324 9390***  
Greenfire Law, PC  
2748 Adeline Street, Suite A  
Berkeley, CA 94703  
Phone: (510) 900-9502, ext. 706

*Attorneys for ReThink 35, et al.*

/s/ Lisa McClain Mitchell  
LISA MCCLAIN MITCHELL  
Assistant Attorney General

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CIVIL ACTION NO. 1:24-CV-00092-DII

**CERTIFICATION OF SECOND SUPPLEMENT TO THE ADMINISTRATIVE  
RECORD DECLARATION OF DOUG BOOHER**

I, Doug Booher, declare as follows:

1. I am the Director of the Environmental Affairs Division of the Texas Department of Transportation (TxDOT). I have served in my Director role since 2021. I have been responsible, with others, for assembling the entire Administrative Record, including this second supplement, for the Record of Decision for the I-35 Capital Express Central Project from US 290 East to State Highway 71/Ben White Boulevard ("CapEx Central" or "Project"), that is the subject of this litigation.


2. Attached to this Declaration as Exhibit 1 is the Index for the Second Supplement to the Administrative Record. The documents in the Second Supplement to the Administrative Record were considered, directly or indirectly, by TxDOT in reaching the decisions challenged in this litigation and/or were requested for inclusion in the record by the Plaintiffs to facilitate the Court's consideration. Without conceding the necessity or propriety of requiring inclusion of documents falling only in the latter category, TxDOT has agreed to their optional inclusion in the Administrative Record here in order to minimize any need for the Court to resolve potential record

disputes. Each document is a true and correct copy of the original documents located in the files for the Project or as originally published, in the case of Federal Register materials.

3. The Administrative Record is comprised of Bates-numbered, word-searchable portable document format (PDF) documents. The Index and electronic copies of all documents in the Second Supplement to the Administrative Record are collected and saved onto one flash drive. Two identical flash drives are being delivered to the Clerk's office, one of which will be routed to the assigned Judge's Chambers by the Clerk, and two flash drives are being delivered to Plaintiffs' counsel.

4. I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and I would so testify if called upon to do so in a court of law.

Dated this 19<sup>th</sup> day of November 2024.

  
DOUG BOOHER  
Director, Environmental Affairs Division  
Texas Department of Transportation